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IB Docket No. 95-41

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Columbia's reply is limited to three particular matters where there is either substantial disagreement with the Commission's initial proposal, or there is a divergence of views among some of the commenting parties concerning issues upon which the Commission expressed no definite view. First, the Commission should decline to adopt its initial proposal to eliminate the two step financial showing for applicants that seek primarily to serve international routes, i.e.,

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applicants for ocean region orbital locations. The uncertainties inherent in coordinating service to foreign countries and gaining access to overseas markets continue to justify the issuance of a conditional license prior to requiring a full financial qualification showing.

Second, the Commission should not further contemplate at this time any change in policy that would permit Comsat to convert the international satellite capacity of INTELSAT (or Inmarsat) for use in the U.S. domestic market. Only after these intergovernmental organizations are fully restructured to eliminate their privileged status and legal immunities, and to diffuse their market power, should such a step even be considered.

Third, steps to condition market access for foreign satellite operators upon reciprocal access to each foreign operators' home market should be adopted in the Commission's proceeding regarding market entry. There is no record basis in this docket for broadening or simplifying the ability of foreign satellite operators to serve the U.S. market.

I. The Basis For Adoption Of The Two-Stage Financial Standard For International Satellite Systems Remains Valid, And This Standard Should Be Retained.

In its initial Comments, Columbia pointed out that the Commission was mistaken in its preliminary assumption that the removal of the domestic/international distinction would permit all future U.S. satellite applicants to obtain financial backing "based on the justified expectation of revenues from the provision of domestic service."^{1/} The realities of the geostationary orbital arc

^{1/} See Columbia Comments at 6-7, citing NPRM, FCC 95-146, slip op. at ¶29.

dictate that ocean region satellites are ideally suited to the provision of transoceanic, i.e., international, service. Operators of satellites at these locations therefore must necessarily rely on this capability to generate the majority of their revenues, notwithstanding the fact that they may have the capability to provide some domestic services.

Because those applicants seeking ocean region orbital slots will still be compelled to rely on their ability to attract international traffic, the uncertainties of serving the international market that originally prompted the adoption of the two-stage financial showing continue to support its retention. As both Columbia and Orion observed in their comments, systems designed to provide primarily international service must not only consult with INTELSAT and affected foreign administrations through the ITU's processes, but must also gain access to earth station facilities in each country where they hope to provide service.^{2/} Indeed, GE Americom, which offers only perfunctory support for extending the domsat financial standard to all U.S. satellite applicants, also devotes much energy to describing the difficulties it expects to encounter in seeking to serve foreign markets.^{3/}

^{2/} See Columbia Comments at 7; Orion Comments at 6.

^{3/} To the extent that GE Americom attempts to use the challenges of gaining access to foreign markets as a means of delaying separate system entry into the domestic market, its arguments are transparently self-serving and anti-competitive. See GE Americom Comments at 4-11. It inaccurately maintains that barriers to entry in foreign markets will unduly disadvantage it vis-à-vis the separate systems, which it asserts "will immediately be able to compete with domsats." See GE Americom Comments at 5. While the barriers facing GE Americom are surmountable regulatory barriers -- and are faced equally by all U.S. licenses -- the limitations on separate systems
(continued...)

Predictably, the only entities arguing in favor of a strict one-stage financial showing for all U.S. satellite applicants are the three industrial giants that currently dominate the U.S. domestic satellite market.^{4/} While it is understandable that these companies would desire a government-mandated barrier to new entrants, none has provided any substantial justification for abandoning a two-stage standard that has proven particularly successful over the past decade. The undesirable practice of spectrum warehousing, which Hughes asserts would be discouraged by expanding the domsat standard to all U.S. space station applicants,^{5/} has not been a problem in the international separate systems industry. Under this standard, three companies have been authorized to provide service, have placed satellites in orbit, and are actually providing service.^{6/} Because the rationale underlying the adoption of the bifurcated showing remains valid, as

^{3/}(...continued)

carrying domestic traffic from their current orbital locations are immutable, as Columbia, Orion and PanAmSat have illustrated. See Columbia at 6; Orion Comments at 7-8; PanAmSat Comments at 4-5. The U.S. cannot ameliorate foreign entry barriers by restricting full competition among U.S. satellite licensees (it can only do so by delaying expansion of foreign operators' access to the U.S. market). GE Americom's suggested "transition plan" should therefore be rejected.

^{4/} See AT&T Comments at 7-9; GE Americom Comments at 4; Hughes Comments at 15-17.

^{5/} See Hughes Comments at 16-17.

^{6/} Moreover, now that privately-held satellite companies have been a reality for a period of some years, and there are multiple providers of service, there is less reason to be concerned that usable orbital slots will remain fallow for extended periods. The satellite industry is now established, and it is likely that any available orbital locations will readily be put to use -- i.e., there is no incentive for speculators to secure spectrum and wait for uncertain demand to materialize.

shown above and in the earlier comments of Columbia, Orion and PanAmSat,^{7/} there is no basis for the Commission to abandon it.

II. COMSAT Must Not Be Permitted To Convert INTELSAT and Inmarsat Space Segment Capacity To Provide Service In The U.S. Domestic Market.

In the NPRM, the Commission posed the question, almost as if it was an afterthought, "whether COMSAT . . . should be permitted to provide domestic service using INTELSAT capacity."^{8/} In response to this query, almost every party that has addressed this issue has emphatically answered no.^{9/} Only one commenter has made any attempt to argue that permitting the conversion of INTELSAT capacity to domestic use would somehow serve the public interest -- COMSAT itself.

COMSAT maintains that it is similarly situated to other satellite providers, and that it should therefore be permitted to provide domestic and international service.^{10/} All other interested commenters reasonably contend that COMSAT cannot be permitted to leverage its exclusive Signatory status within the international satellite organizations to exploit this unique capacity for provision of service in the U.S. market.^{11/} With respect to INTELSAT (and Inmarsat) capacity,

^{7/} See PanAmSat Comments at 7-8.

^{8/} NPRM, FCC 95-146, slip op. at ¶39.

^{9/} See Columbia Comments at 8-11; PanAmSat Comments at 8; GE Americom Comments at 12-13; AT&T Comments at 13-14; Orion Comments at 4-5.

^{10/} See COMSAT Comments at 3.

^{11/} See, e.g., Columbia Comments at 9-10; Orion Comments at 5; PanAmSat Comments at 8; GE Americom Comments at 12.

because COMSAT is indisputably a different type of service provider from all other "satellite" companies, it is not entitled to identical treatment with U.S. satellite operators, and according it such treatment would be virtually certain to cause market distortions and lead to reduced competition.^{12/}

COMSAT nonetheless attempts to argue that it has "no market power" internationally that can be leveraged in the U.S. market, citing a recent study that it commissioned from the Brattle Study Group.^{13/} The thrust of this argument, however, is that COMSAT/INTELSAT now has many inter- and intra-modal competitors that have reduced the share of traffic carried via the international satellite organizations and their Signatories. This line of reasoning misses the essential point that it is the size and structure of these entities that provides them with the ability to cross-subsidize particular types of service in order to gain competitive advantage. The number of other competitors is irrelevant because not one of these new entrants has the unique status that COMSAT enjoys. Unlike private companies that must individually raise capital to compete in the telecommunications marketplace, COMSAT and the other INTELSAT signatories have at their disposal a vast system financed over many years by

^{12/} COMSAT inaccurately maintains that there would be "market distortions" if it were "singled out as the only satellite operator not permitted to offer both domestic and international services." See COMSAT Comments at 5. This assertion ignores the fact that, with respect to INTELSAT, it is not an *operator* at all, but an exclusive conduit for the sale of satellite capacity constructed and launched for international use by all member nations. Where COMSAT itself operates its own satellite capacity, separate from INTELSAT, Columbia believes that there should be no impediment to its offering both domestic and international service.

^{13/} See COMSAT Comments at 10-11.

scores of government-affiliated and government-sponsored entities. Even large U.S. companies like GE and Hughes would have difficulties in the face of such advantaged competitors.

As Columbia and others noted, there are currently ongoing discussions concerning the proper future role for the international satellite organizations in the emerging "global information infrastructure."^{14/} Accordingly, the Commission itself has recommended that INTELSAT and Inmarsat be privatized, with the corollary elimination of their special privileges, including favored access to orbital locations, and the legal immunities from which they now benefit.^{15/} Until these reforms are adopted and completed, it is premature to even take up the notion of permitting COMSAT to enter the U.S. market using the facilities of the international satellite organizations. When the time is ripe for this issue to be addressed, it should be taken up in a separate rulemaking proceeding.

III. Reciprocity Standards Should Be Developed In The Commission's Market Entry Proceeding, And Should Permit Non-U.S. Satellites Access To The U.S. Market Only Where Equivalent Opportunities Are Available To U.S. Service Providers In Their Home Markets.

Finally, the Commission also sought Comment "on whether, and under what conditions, non-U.S. satellites should be permitted to serve the U.S.

^{14/} Indeed, if permitted to continue in their current form, these bodies could be a substantial impediment to the future growth of competition in the global telecommunications marketplace.

^{15/} See Report of Special Counsel to the Commission on Reinventing Government, Appendix A, Summary of Bureau and Office Recommendations for 1995 Legislative Proposals, at 2 (dated February 1, 1995).

domestic market."^{16/} Again, there is overwhelming agreement among the parties addressing this issue that foreign satellite systems should be permitted to operate in the U.S. -- for either international or domestic service -- only to the extent that their own home markets are open to U.S. satellite operators on a reciprocal basis.^{17/} Most of these same parties also properly noted that these and similar issues are already being addressed in another Commission proceeding,^{18/} and that forum was the appropriate one in which to resolve these issues.^{19/}

IV. Other Matters

Some commenters have raised issues that are entirely extraneous to the matters raised by the Commission. For example, Guam Telephone Authority ("GTA") asserts that the removal of the regulatory distinction between domestic and international satellites compels a conclusion that Guam must be integrated into the domestic rate averaging scheme. See Comments of GTA at 3. This logic is

^{16/} NPRM, FCC 95-146, slip op. at ¶ 39.

^{17/} See, e.g., Columbia Comments at 11-12; AT&T Comments at 14-20; GE Americom Comments at 13-15. Cf. Transworld Comments 3 et seq. (Transworld seeks unfettered market access for Russian satellites in the U.S. market. The Russian market, however, is essentially closed to U.S. satellite companies, making it an excellent example of the need for a strict reciprocity requirement. See Columbia Petition for Declaratory Ruling, ISP-93-014, at 17-22 (filed August 20, 1993).)

^{18/} See Market Entry and Regulation of Foreign-Affiliated Carriers, FCC 95-53 (released February 17, 1995).

^{19/} See, e.g., GE Americom Comments at 15.

specious,^{20/} but need not be dealt with in this docket because these issues are directly addressed in two recently released FCC Public Notices. See Public Notice, "Rate Integration for the Provision of Communications Between the United States Mainland, Hawaii, Alaska, Puerto Rico/Virgin Islands and Guam (AAD 95-84)," DA 95-1359 (released June 16, 1995); Public Notice, "Petition for Rulemaking to Implement Rate Integration for Guam (AAD 95-85)," DA 95-1360 (released June 16, 1995). This issue should be dealt with in the context of those proceedings.

V. Conclusion

Based on the record established in this proceeding, there is no reason for delay in adopting the Commission's proposed elimination of the distinction between U.S. domestic and U.S. international satellites. However, the Commission should not alter the existing two-stage financial standard applicable to applicants seeking "international" orbital slots. The Commission should also heed the overwhelming consensus among commenters that it would be inappropriate to consider permitting COMSAT to provide domestic service using INTELSAT capacity, at least until the international organization has been fully restructured and stripped of its privileges and immunities as a treaty organization. Finally, the

^{20/} The applicability of the Commission's rate integration policies to offshore, non-CONUS domestic points has been premised on the capability of at least some U.S. geostationary satellites to encompass each such point in the same footprint as CONUS, thereby providing a relatively distance insensitive means of transmission. Any change in regulatory policy in this proceeding will not change the realities of the geostationary orbital arc -- no currently-licensed U.S satellite will be able to cover both CONUS and Guam.

Commission should consider issues concerning access to the U.S. market by foreign companies in its already-initiated market entry proceeding.

Respectfully submitted,

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June 23, 1995

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